

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Edward H. Sargent

Serial No.: 09/988,030

Filed: November 16, 2001

FOR: DYNAMICALLY RECONFIGURABLE  
OPTICAL AMPLIFICATION ELEMENT



) Confirmation No.: 7743

) Art Unit: 2874

) Examiner: Lee, John D.

) Attorney Docket No.: 115354-00104

) Date: March 12, 2004

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The present Response is filed in response to a Restriction Requirement mailed November 14, 2003. A Petition for a Three-Month Extension of Time is filed concurrently herewith.

In response to the Restriction Requirement, the Applicant hereby elects invention I, claims 1-4 and 7-19, drawn to an optical amplification element and method of making it. The election is made *with* traverse.

MPEP §803 provides as follows:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

In the present application, the search for the optical amplification element and the search for the interferometric optical wavelength converter would involve a substantial overlap because of the semiconductor quantum well structure. Therefore, the Applicant respectfully submits that any burden in the search and examination of the entire application, as opposed to invention I or

II, would be *de minimis*. In particular, that burden is to be compared with the financial burden on the Applicant involved in filing and prosecuting a divisional application.

For the reasons set forth above, the Applicant respectfully submits that the present restriction requirement is improper and respectfully request that it be reconsidered and withdrawn.

The present traversal should not be construed as an admission that the two inventions are not patentably distinct. In the event that the restriction requirement is maintained, the Applicants reserve the full protection of 35 U.S.C. §121 against double-patenting rejections.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (115354-00104). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this Response or is insufficient to render this Response timely, the Applicant hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized above.

Respectfully submitted,

~~Edward H. Sargent~~

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